

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

----

In re the Marriage of LYNN M. and KENNETH  
BARKER.

C079864

LYNN M. SENECA BARKER,

(Super. Ct. No. FL380318 )

Respondent,

v.

KENNETH BARKER,

Appellant.

Appellant Kenneth Barker appeals in propria persona from a judgment on division of property following the dissolution of his marriage to Lynn M. Senecal Barker (Senecal). The trial court entered a judgment terminating Barker and Senecal's marital status, restoring Senecal's former last name, and reserving all other issues. Following a trial on the reserved issues, Judge Tony J. Agbayani issued a statement of decision and

subsequently, a judgment tallying what the parties owed each other and determining that Barker owed Senecal an equalizing payment of \$2,690.00.

In his brief on appeal, Barker contends: (1) the court violated his right to due process by having an armed bailiff in the courtroom; (2) the court violated his due process right to be heard; (3) Senecal violated a restraining order under the “plain meaning rule” and is therefore not entitled to a judgment in her favor under the doctrine of unclean hands; (4) the court exhibited bias in favor of Senecal’s counsel; (5) the court erred in ruling that Barker’s accusation of theft of his personal property by Senecal’s son was not properly before the court; (6) the court “fabricated evidence”; (7) the court acted as an advocate for Senecal; (8) the court violated the code of judicial ethics by failing to comply with “the reasonable man standard”; and (9) the court failed to resolve all controverted issues. Barker failed to include the judgment he appeals from in his appendix, instead alleging various errors in the statement of decision and in Judge Agbayani’s conduct and courtroom procedures at trial, which was not reported and thus outside the record before us. Additionally, Barker failed to cite appropriate legal authorities and evidence in the record to support his claims of error.

We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Barker has elected to proceed with his appeal with only an appellant’s appendix, which includes portions of the clerk’s transcript. (Cal. Rules of Court, rules 8.121, 8.122.) Thus, the appellate record does not include a reporter’s transcript of the hearings in this matter. This is referred to as a “judgment roll” appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083 (*Allen*); *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

The limited record we have establishes that on August 12, 2013, Senecal petitioned the court for a dissolution of marriage. On June 27, 2014, the court entered a judgment dissolving the 13-month marriage, reserving issues for trial. After a trial, the

court issued a statement of decision on June 3, 2015. In its statement of decision, the court noted, “There was much testimony in this trial, much contentiousness, many accusations, and very little in the way of documentation or supporting witnesses.” The court further noted that in the bulk of Barker’s request for a statement of decision, Barker engaged “in personal attacks on the court such as referring to the court’s findings as ‘baloney,’ and ‘more court baloney.’ ” Despite his complaints in the request for a statement of decision, the record does not indicate that Barker requested clarification of the statement of decision, moved for a new trial, or moved to vacate the judgment. On November 4, 2015, the court entered a judgment resolving the issues at trial and determining that Barker owed Senecal an equalizing payment of \$2,690.00.

## **DISCUSSION**

### **I. Standard of Review and Rules of Appellate Procedure**

“ ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) Accordingly, we must adopt all inferences in favor of the judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.) It is Barker’s burden as the appellant to affirmatively show error by citing an adequate record to support his summary of the facts and legal authority to support each analytical point made; otherwise, the argument is forfeited. (See, e.g., *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) “We discuss those arguments that are sufficiently developed to be cognizable. To the extent [an appellant] perfunctorily asserts other claims, without development . . . , they are not properly made, and are rejected on that basis.” (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2.) If an appellant fails to furnish both a legal argument *and* citation to facts and authorities on a particular point in his brief, the court

may pass it without consideration. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408 [points asserted without argument or authority are deemed without foundation and require no discussion by a reviewing court]; see also *In re Marriage of Schroeder* (1983) 192 Cal.App.3d 1154, 1164.) An appellant cannot simply claim the lower court erred and leave it up to the appellate court to determine why. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.)

Further, it is an appellant's burden to provide an adequate record of the proceedings in the trial court to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) When, as here, an appeal is "on the judgment roll" (*Allen, supra*, 172 Cal.App.3d at pp. 1082-1083), we must conclusively presume evidence was presented that is sufficient to support the court's findings (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154), and our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)

These restrictive rules of appellate procedure apply to Barker even though he is representing himself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; see also *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) Barker's appellate brief lacks both citations to pertinent authority and a coherent legal argument. (See Cal. Rules of Court, rule 8.204(a)(1)(B)-(C).) Although he appears in this court without counsel, that does not entitle Barker to special treatment. (See, e.g., *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) " 'A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts, otherwise, ignorance is unjustly rewarded.' " ( *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.)

With this framework, we will turn to analyzing those of Barker's arguments that are not perfunctorily asserted.

## **II. Forfeiture**

For the first time on appeal, Barker raises various challenges to the statement of decision. When a court issues a statement of decision, “a party claiming deficiencies therein must bring such defects to the trial court’s attention to avoid implied findings on appeal favorable to the judgment ([Code Civ. Proc.], § 634).” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134 (*Arceneaux*).) “If a party fails to raise omissions or ambiguities in the trial court, the appellate court will infer the trial court made all factual findings necessary to support the judgment.” (*In re Marriage of Bonvino* (2015) 241 Cal.App.4th 1411, 1424 (*Bonvino*).) “[I]t would be unfair to allow counsel to lull the trial court and opposing counsel, into believing the statement of decision was acceptable, and thereafter to take advantage of an error on appeal although it could have been corrected at trial. . . . It is clearly unproductive to deprive a trial court of the opportunity to correct such a purported defect by allowing a litigant to raise the claimed error for the first time on appeal.” (*Arceneaux*, at p. 1138.) In the instant case, Barker failed to object to the statement of decision or raise omissions therein. Accordingly, his newly raised arguments objecting to the statement of decision are forfeited.

## **III. Presence of Bailiff in Courtroom**

Barker asserts that the trial court violated his right to due process because his table in the courtroom was positioned next to an armed bailiff and he was at times blocked by the bailiff from approaching the bench. This argument is unsupported by either evidence in the record or citation to pertinent authority. Because there is no reporter’s transcript, Barker cites his own request for a statement of decision in the trial court to support his factual assertions on appeal. Unsupported assertions in Barker’s written argument below are not evidence. Further, even assuming there was an armed bailiff present, none of Barker’s legal citations suggest that a litigant’s right to due process is violated by the presence of an armed bailiff in the courtroom. Indeed, the trial court has the power to maintain courtroom security; our high court has held that “the use of security personnel,

even in the courtroom, is not so inherently prejudicial that it must be justified by a state interest specific to the trial.” (*People v. Hayes* (1999) 21 Cal.4th 1211, 1268.) Barker has failed to demonstrate that he was actually prejudiced by the presence of the bailiff or the bailiff’s conduct.

Further, we note that this matter was addressed following Barker’s post-trial petition to disqualify Judge Agbayani. The petition was heard by Judge Verna A. Adams, of the Marin County Superior Court, sitting by assignment. Judge Adams found that “[h]aving a bailiff in a family law courtroom is a standard practice in California and with good reason. There is no evidence proffered to support [Barker’s] subjective opinion that Judge Agbayani’s bailiff ‘restrained’ [Barker].”

Accordingly, we reject Barker’s argument related to the bailiff.

#### **IV. Opportunity to be Heard**

Barker contends that the trial court violated his right to due process because he “was not given a meaningful opportunity to be heard” after he was threatened multiple times with sanctions in response to his conduct during trial. He presents disjointed and conclusory arguments in support of his view. The due process clause guarantees “ ‘notice and opportunity for hearing appropriate to the nature of the case.’ ” (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1500.) Barker claims the threat of sanctions “had a chilling effect upon [his] exercise of the constitutional guarantee to be heard.”

Again, there is no evidence in the record to support Barker’s factual assertions because there is no reporter’s transcript. We have no way of determining whether Barker made timely objections or whether he was prejudiced by the threat of sanctions. Additionally, we do not know the context in which the sanctions were allegedly

threatened or whether Barker engaged in conduct warranting the trial court's actions.<sup>1</sup> In the absence of Barker providing any meaningful legal analysis or evidence to support his claims, we must reject his conclusory due process argument. (*Denham, supra*, 2 Cal.3d at p. 564; *In re S.C., supra*, 138 Cal.App.4th at p. 408.)

## **V. Claims Related to the Restraining Order**

Barker contends that the trial court failed to comply with the “plain meaning rule” in interpreting the language of a restraining order. In a related argument, Barker contends the court erred in allowing Senecal to profit from a purported violation of the restraining order under the doctrine of unclean hands.

In its statement of decision, the court found that contemporaneous with the petition for dissolution of marriage on August 12, 2013, the court issued standard automatic temporary restraining orders (“ATROs”) required by Family Code section 2040.<sup>2</sup> ATRO No. 3 provided, *inter alia*, that parties were restrained from “[t]ransferring, encumbering, hypothecating, concealing, or in any way disposing of any property.”<sup>3</sup> (*Italics added.*) The court found that Barker and Senecal stipulated that

---

<sup>1</sup> In its statement of decision, the court noted that when the court ruled on objections, Barker continued to argue even though the court had indicated it had ruled. Additionally, Barker sought to reargue matters the court had already ruled upon. The court then noted in its statement of decision its practice was to warn both counsel and self-represented litigants alike, “followed by an indicated sanction should the conduct persist.” The court further noted that Senecal’s counsel “repeatedly complained that the court threatened sanctions against [Barker] numerous times and then continually gave him another chance.”

<sup>2</sup> Further undesignated statutory references are to the Family Code in effect at the time of the relevant events.

<sup>3</sup> Section 2040, subdivision (a)(2) provides that the ATRO shall contain an order “[r]estraining both parties from *transferring*, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring

Senecal placed Barker's personal property in a storage unit at her own expense but without obtaining his permission or a court order.

At trial, Barker contended that Senecal had violated the restraining order by moving all his personal property into storage for him to pick up because this was a "transfer" under the plain meaning of the ATRO. Barker asserts that at trial, he contended that the court should apply the following definition of transfer from a version of Weber's Dictionary: " 'to convey or remove from one place, person, etc. to another place' and " 'to be moved from one place to another.' " The court, however, reasoned the words "transferring, encumbering, hypothecating and concealing" are all terms indicating methods of attempting to deprive another of their right of possession and concluded that the purpose of section 2040 and ATRO No. 3 is "to prevent the disposal or concealing of property by any means." The court found that Senecal simply moved Barker's property to storage "for safekeeping because he never returned to pick it up." The court additionally found that Senecal "stored and preserved [Barker's] property, let him know where it was at, and despite some technical difficulties concerning code access, gave him access to his property. There was no concealment or attempt to permanently deprive him of the property." The court found that Senecal acted in good faith by storing and preserving Barker's personal property and did not violate the ATRO.

There is no record that Barker objected to the court's finding in its statement of decision. Further, Barker has failed to demonstrate in his appellate briefing how he was prejudiced. Section 2040 does not define the word "transfer." However, we reject Barker's position that his interpretation is the only plain meaning of the statute. The Merriam-Webster Unabridged Dictionary defines the transitive verb "transfer" to mean,

---

each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party." (Italics added.)

“1a.: to carry or take from one person or place to another”; “b: to move or send to a different location especially for business, vocational or military purposes” ; “c: to cause to transform: change”; “2: *to make over or negotiate the possession or control of (a right, title, or property) by a legal process usually for consideration; convey*”; and “3: to print, impress, or otherwise copy (as a drawing or engraved design) from one surface to another.” (<<http://unabridged.merriam-webster.com/unabridged/transfer>>, italics added.) That same dictionary defines the verb “convey” to mean, inter alia, “c: steal”; “to carry or take away or remove usually secretly”; and “d. to transfer or deliver (as property) to another; *specifically*: to transfer (as real estate) or pass (a title, as to real estate) by a sealed writing.” (<<http://unabridged.merriam-webster.com/unabridged/convey>>) We also note that the same dictionary defines the noun “transfer” as, inter alia, “1a: the conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process.” (<<http://unabridged.merriam-webster.com/unabridged/transfer>>)

Thus, the word “transfer” is susceptible to more than one meaning (one of which set forth in italics, *ante*) is consistent with the meaning assigned by Judge Agbayani. On the other hand, the meaning Barker advocates is significantly broad and could include a party physically moving personal property within a home or even a room or even into a different drawer. Such an interpretation of an automatic restraining order could create numerous unnecessary hurdles and open up a host of needless disputes where divorcing parties are attempting to physically separate themselves and their belongings.

We agree with the trial court that the statutory language “or in *any way disposing* of any property” is qualifying language suggesting that the word “transfer” in this context refers to conveyance that conceals or deprives the spouse of the right of possession. Barker has not cited any case holding that a due process violation results from a court applying a more narrow plain meaning of a word in statutory language when no prejudice has been shown, and we see no reason to so hold here.

In a related argument, Barker claims that because Senecal purportedly violated the restraining order by moving his personal property to storage, the doctrine of unclean hands prohibits her from “profiting from her unlawful conduct.” It is unclear from the briefing exactly how Barker believes Senecal profited from moving his personal property to storage. Nevertheless, for the reasons we have discussed, we agree with the trial court that Senecal did not violate the restraining order. Accordingly, we reject Barker’s argument that the court should have invoked the doctrine of unclean hands.

## **VI. Judicial Bias**

Barker contends that the trial court showed bias in favor of Senecal’s attorney. In a “motion for sanctions” against the attorney based on purported perjury in an attorney declaration, Barker argued that because the declaration made statements of opinion, the attorney had perjured himself. However, Barker failed to include in the record on appeal a copy of the attorney’s declaration on which the motion is based. Further, we have no reporter’s transcript to determine what occurred during the hearing on the motion. In his request for a statement of decision, Barker complained that the court had failed to address his motion for sanctions. However, in the judgment, the trial court specifically reserved jurisdiction over the issue of sanctions, so it is unclear how Barker has been prejudiced. Further, because we have no transcript of proceedings, there is no evidence Judge Agbayani exhibited bias at the hearing. We therefore reject Barker’s argument.

## **VII. Barker’s Theft Claim**

Barker alleges that Senecal was responsible for the theft of his personal property that he lent to her son. He contends that he lent Jeffrey Senecal a coffee table and microwave that were subsequently sold. Barker makes several factual claims about testimony at trial that are not supported by the record because there is no reporter’s transcript. The trial court found that this was “a separate dispute between [Barker] and Jeffrey Senecal and is not properly before this court.”

Barker claims this ruling was in error because the property in question was under Senecal's "sole care, custody and control." However, there is nothing in the record to support this factual assertion. Accordingly, we must infer the trial court made all necessary factual findings to support its judgment. (*Bonvino, supra*, 241 Cal.App.4th at p. 1424.) We reject Barker's argument.

### **VIII. Fabrication of Evidence**

Barker contends that Judge Agbayani fabricated evidence by finding in its tentative decision that Barker sought \$250,000 in damages. In its tentative decision, the court noted that Barker "sought 'damages' of \$250,000 for the loss of [two disks with business information] as they contained records to show that the steel beams he purchased were made in the United States; such records are required to use the steel in construction jobs." In support of his argument that the trial court incorrectly summarized the evidence in its tentative ruling, he cites only his request for a statement of decision rather than evidence in the record. In its statement of decision, the court clarified that Barker "testified that the 'damage' caused by the loss of the two disks was \$250,000." Once again, we have no way of evaluating Barker's claim on appeal because there is no record of how he testified in the trial court. We must infer the trial court made all necessary factual findings to support its judgment and reject Barker's claim. (*Bonvino, supra*, 241 Cal.App.4th at p. 1424.)

Barker also claimed the trial court "fabricated evidence" by incorrectly describing items in various photographs in the exhibits in its tentative ruling and statement of decision. However, significantly, Barker does not include in his appendix all of the exhibits and particularly the photographs presented at trial. Further, any claim of error in the court's factual findings is forfeited because Barker failed to object to the statement of decision.

### **IX. Trial Court Acting as Advocate**

Barker contends that Judge Agbayani acted as an advocate by ruling, inter alia, that Senecal was entitled to half of \$6,300 held in trust from the sale of community property because he contends Senecal's counsel waived any claim to the money at trial. This is unsubstantiated by the record and we have no reporter's transcript to determine what took place at trial. Barker further claims the court acted as an advocate for Senecal by finding that there was no independent witness to threats allegedly made by Senecal. In support of his challenge to this finding, Barker cites his own letter claiming that the threat took place. This is not evidence of an independent witness to the purported threats. Finally, any claim of error in the court's factual findings is forfeited because Barker failed to object to the statement of decision.

### **X. Judicial Ethics**

Barker claims that the trial court failed to comply with the "reasonable man standard" and that Judge Agbayani violated his ethical obligation to "act impartially, competently, and diligently." Barker does not explain what the "reasonable man standard" is or why he thinks it was violated. Instead, he rehashes evidentiary claims already addressed elsewhere in his brief, asks this court to re-weigh the evidence, and claims that the court failed to "reasonably question [Senecal's] glaring contradictory testimony." Once again, Barker fails to cite any pertinent evidence in the record and cannot cite any "glaring contradictory testimony" because there is no reporter's transcript documenting the testimony. Accordingly, we reject Barker's conclusory assertions and infer the trial court made all necessary factual findings to support its judgment. (See *Bonvino, supra*, 241 Cal.App.4th at p. 1424.)

### **XI. Controverted Issues**

Barker claims that we should reverse the judgment because the court failed to fully resolve all controverted issues in its statement of decision. Any claim of error in the

court's factual findings is forfeited because Barker failed to object to the statement of decision.

**DISPOSITION**

The judgment is affirmed. Appellant shall pay respondent's costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(1) & (5)).

\_\_\_\_\_  
/s/  
MURRAY, J.

We concur:

\_\_\_\_\_  
/s/  
BUTZ, Acting P. J.

\_\_\_\_\_  
/s/  
DUARTE, J.